

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

ILLINOIS POWER AGENCY	:	
	:	Docket No. 15-0541
Petition for Approval of the 2016 IPA	:	
Procurement Plan Pursuant to Section	:	
16-111.5(d)(4) of the Public Utilities Act	:	

**REPLY BRIEF ON EXCEPTIONS OF COMMONWEALTH EDISON COMPANY**

Commonwealth Edison Company (“ComEd”) submits this Reply Brief on Exceptions (“Reply BOE”) relating to the Administrative Law Judges’ (“ALJs”) Proposed Order (“Proposed Order” or “PO”) served on November 13, 2015 and the Briefs on Exceptions (“BOEs”) filed by various parties on November 20, 2015. As ComEd observed in its BOE, the Proposed Order skillfully navigates the complex issues of load migration due to customer switching, and reaffirms the sound procedures that the Illinois Power Agency (“IPA”) has developed and implemented over the years to reduce curtailment risks while achieving the statutory objectives. The efforts of the Renewables Suppliers and the Environmental Law and Policy Center (“ELPC”) on exceptions to disrupt the careful balances struck by the IPA and Illinois Commerce Commission (“ICC” or “Commission”) – whether through a redundant review and approval process of the updated load forecasts or through risky procurement of long-term distributed generation contracts – thus should be rejected.

With respect to energy efficiency procurement, only the Staff of the Commission (“Staff”) argues on exceptions for a fundamental dismantling of the third party-administered energy efficiency programs required by Section 16-111.5B of the Public Utilities Act (“the Act”). By insisting on an unlawful hindsight review of vendor performance where the vendor would not be paid until years after it first incurs start-up costs, Staff would ensure that vendors

are effectively frozen out of participating because of the onerous and unprecedented payment restrictions. Concurring with the IPA, ELPC and ComEd, the Proposed Order properly rejects Staff's attempted undoing of Section 16-111.5B, and sends the clear direction needed to assure the IPA, utilities, and stakeholders that Section 16-111.5B should continue to be implemented and the General Assembly's intent given full effect. The Commission thus should adopt the Proposed Order's conclusion (with the revisions proposed by ComEd's BOE), and reject Staff's attempt to insert vagueness and uncertainty regarding the future of IPA energy efficiency.

Finally, the IPA's and ComEd's BOEs suggested clarifications regarding the Proposed Order's discussion of expanding Section 8-103 energy efficiency programs under Section 16-111.5B when the Section 8-103 programs have not yet been approved. Because both ComEd and the IPA support the Proposed Order's ultimate conclusion that the issue be considered further in workshops, ComEd recommends that either the IPA's proposed revisions or ComEd's proposed revisions be adopted to clarify the statutory background and legal issue. Relatedly, ComEd also supports Ameren Illinois' clarifying revisions to the Proposed Order regarding multi-year contracts.

## **I. EXCEPTIONS RELATED TO CUSTOMER MIGRATION AND CURTAILMENT RISK**

Throughout this docket, the Renewables Suppliers have advanced two principal proposals designed to maximize their financial interest while placing increased risk and cost upon customers – (i) foreclosing the ability to curtail contracts if needed to comply with the statutory rate caps and (ii) imposing significant increases of the procurement of renewable energy credits through 2021 (the latter proposal also having been made by ELPC). The Proposed Order correctly rejects these aggressive efforts to increase suppliers' revenues at the expense of

customer protections, and the Commission should accordingly decline to adopt the revisions proposed by the Renewables Suppliers and ELPC in their BOEs.

**A. PLAN ACTION ITEMS 2 AND 7: WHETHER ANY LTPPA CURTAILMENT WILL BE REQUIRED FOR THE 2016-2017 DELIVERY YEAR (SEC. IV.B.1 OF PO).**

It is well-established Commission practice under Section 16-111.5 that the utilities must submit updated load forecasts in the month of March following the Commission's December order approving the procurement plan. This is designed to refresh the load forecast data originally submitted by the utilities in July, and is subject to the consensus of each utility, the IPA, the ICC Staff, and the Procurement Monitor. IPA Response at 23-25.

The only party to take exception to this sound, well-tested, and reliable process is the Renewables Suppliers. Renewables Suppliers BOE at 1-5. As is fully laid out in their Objections, Response, and Reply, the Renewables Suppliers' original aim in this docket was to obtain a Commission order that prematurely foreclosed the ability to curtail contracts for the 2016-2017 delivery year based on a perceived low risk of curtailment at this time. *See, e.g.*, Renewables Suppliers Objections at 2. Because this proposal would not allow utilities to curtail contracts to comply with the statutorily-mandated rate cap protections if customer switching increased, the proposal was overwhelmingly opposed by the parties (IPA Response at 18-25; Staff Response at 2-6; Ameren Response at 4-6), and the Proposed Order thus properly rejected this proposal as contrary to the statute (PO at 77-78).<sup>1</sup> While the Renewables Suppliers' BOE finally drops this unlawful argument, it nevertheless attempts to revive one of the "alternative"

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<sup>1</sup> The quantity of renewable energy resources that may be procured for a given planning year cannot exceed the budget established by the statutory rate cap. *See* 20 ILCS 3855/1-75(c)(2). Because the number of eligible retail customers of a utility (*i.e.*, those customers eligible to take, and are taking, bundled supply service) can suddenly and dramatically change due to switching under municipal aggregation programs, the long-term purchase power agreements are designed with a "curtailment" of the amount of resources to be procured in the event that the costs of the resources would exceed the cap.

arguments it previously made – namely that the parties, including the suppliers, should be permitted to submit comments on the updated March load forecasts and the Commission should issue *another* ruling on those updated forecasts. Renewables Suppliers BOE at 1-5.

Yet, this argument is the exact same argument that the Renewables Suppliers have made in prior dockets and that the Commission has already rejected. The Commission has previously held that the existing process properly and fairly functions to ensure accurate and unbiased results because the participants (IPA, Procurement Monitor, Staff and the utilities) are experts in load forecasting and do not have a financial interest in the outcome of the load forecasts:

The Commission understands that the RS is concerned with the potential impact of any updated load forecast as it has an economic interest in the potential impact on LTPPA curtailment. On the other hand, the Commission is reassured that those traditionally responsible for preparing and reviewing the updated forecast have no economic incentive to produce, or allow to be produced, a biased forecast. The Commission notes the RS request a brief period of 7 to 14 days to submit comments on the updated forecast. Based on the August 15, 2013 posting of Draft Plan by the IPA, the RS had significantly more time to review the load forecasts than it proposes to review the updated forecasts. The nature of the RS' review, comments, and recommendations regarding the load forecasts suggest to the Commission that approving the RS' proposal would serve no meaningful purpose.

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The Commission also observes that the IPA is an independent state agency created specifically to develop the Procurement Plan as well as to implement the approved Plan. While the Staff, Procurement Administrator, and Procurement Monitor participate in and oversee the IPA's activities, the IPA has responsibility for many of the procurement activities. Despite the concerns expressed by the RS, the Commission is comfortable the process it has previously used has been and will continue to be effective and successful.

*Illinois Power Agency*, ICC Docket No. 13-0546, Final Order (Dec. 18, 2013) at 198. In sum, the primary purpose of the revised March forecast is to purchase the correct amount of energy for customers, and the existing consensus process has proven very effective in accomplishing this goal. Indeed, customers may bear additional costs and risks if the updated forecast cannot be implemented due to an unwise and unnecessary change to the current efficient and unbiased process. For example, if the approved forecast turns out to be artificially high because additional forecasted switching was ignored, customers would be exposed to losses from unneeded/unhedged energy purchases that were made based on an erroneous forecast. ComEd Response at 5.

For these reasons, the Renewable Suppliers' argument should again be rejected by the Commission and the Proposed Order's conclusion adopted.

**B. SECTION 8. WHETHER ELPC'S REQUEST THAT THE IPA EXPAND ITS PROPOSED DG PROCUREMENT IN EARLY 2016 IN ORDER TO LEVERAGE EXPIRING FEDERAL TAX CREDITS TO BENEFIT ILLINOIS CUSTOMERS SHOULD BE GRANTED (SEC. IV.B.10 OF PO).**

The Renewables Suppliers paired their proposal to foreclose curtailment options with a proposal to *increase* the procurement of renewable energy credits under contracts up to five years in length. (ELPC also advanced a similar proposal). Renewables Suppliers Objections at 4-5; ELPC Objections at 3. Recognizing that this proposal ignores the reality of dramatic customer switching that has and can occur through municipal aggregation programs, the Proposed Order correctly rejected this risky proposal, as the IPA, Ameren and ComEd urged. PO at 110-111; ComEd Response at 5-7; IPA Response at 19-23; Ameren Response at 6-7; ComEd Reply at 9-11; IPA Reply at 9-10; Ameren Reply at 26-27. On exceptions, however, the Renewables Suppliers and ELPC renew their arguments for the expanded procurement, and

claim, for example, that the proposal is “conservative.” Renewables Suppliers BOE at 6-11; ELPC BOE at 2-5. As explained below, it is clear that committing to five-year contracts in Illinois’ highly volatile switching environment is not at all “conservative.”

That municipal aggregation has created a volatile switching environment in ComEd’s service territory cannot be disputed. Following passage of the statutory provision authorizing municipal aggregation programs, ComEd’s service territory saw over two-thirds of its residential and small commercial customers switch from taking supply service from ComEd to taking supply from a retail electric supplier. As a result, long-term renewable purchase power agreements executed in 2010 had to be curtailed to ensure that the statutory rate caps were not violated. Over the past year, however, some municipalities (including the City of Chicago) have suspended their municipal aggregation programs because of recent power price movements, and as a result returned customers to utility supply. This year illustrates how the forecast of future funds available for renewable energy credit procurements can and does change drastically from year to year. ComEd Response at 6.

In light of this history, the current funds identified by the Renewables Suppliers and ELPC for renewable energy credit purchases through 2021 cannot be considered “money in the bank” that will unquestionably be available. A substantial portion of these projected funds would disappear in the event that one or two large municipalities reestablished their municipal aggregation programs. ComEd Response at 6; IPA Response at 28. It is this reality that the IPA has well managed in its 2016 Electricity Procurement Plan (“2016 Plan”). Specifically, the Plan minimizes risk by restricting renewable energy credit purchases to a single year to meet the Renewable Portfolio Standard using the current year’s funds. For those multi-year purchases undertaken to meet the Renewable Portfolio Standard requirements, the IPA uses the known (and

already collected) monies from alternative compliance payments (hourly alternative compliance payment funds and the Renewable Energy Resources Fund). ComEd Response at 6-7.

The Proposed Order thus correctly concludes that the IPA's 2016 Plan skillfully navigates the risks of switching and strikes the right balance between satisfying Renewable Portfolio Standard requirements and mitigating the risks of future curtailments. The Commission should accordingly adopt the Proposed Order's conclusion and reject the arguments of the Renewables Suppliers and ELPC.

## **II. EXCEPTIONS RELATED TO ENERGY EFFICIENCY PROCUREMENT**

### **A. SECTION 7.1.6.4. WHETHER TO EXCLUDE PROGRAMS THAT COMED HAS DETERMINED ARE "PERFORMANCE RISK" PROGRAMS FROM THE PLAN (SECTION IV.B.9 OF PO).**

Since the General Assembly amended the Act in 2011 to add energy efficiency to the IPA procurement process, ComEd has conducted the request-for-proposals ("RFP") process required by Section 16-111.5B to procure third-party administered energy efficiency programs. 220 ILCS 5/16-111.5B. Accordingly, ComEd undertook the RFP process for the 2016 Plan, and submitted to the IPA those third-party administered programs that passed the statutory total resource cost ("TRC") test (*i.e.*, cost-benefit analysis). As part of that submittal, ComEd noted that four programs posed a performance risk for various reasons. ComEd Objections at 5; 2016 Plan at 103. Even so, including the programs does not generally pose a financial risk to customers because a failure to deliver all of the promised energy savings will result in reduced payments to the vendor under the "pay-for-performance" contracts used by ComEd. 2016 Plan at 103. As a result, the Proposed Order correctly concludes that the proposed energy efficiency programs should be approved, including the performance risk programs. PO at 103-104.

Throughout its Objections, Response, Reply and now BOE, Staff has launched a vigorous attack on the IPA's third-party administered energy efficiency programs. Staff Objections at 6-13; Staff Response at 14-17; Staff Reply at 10-13; Staff BOE at 4-10. Indeed, as the IPA and ComEd have noted, Staff's proposals, if adopted, would effectively eliminate all third-party administered programs under Section 16-111.5B, thus eviscerating the statutory requirements. This is because Staff's proposal would force utilities – for the first time since energy efficiency programs began being offered in Illinois – to withhold all vendor payments until after the final evaluation results are filed, which is years after vendors first incur start-up costs to implement their Commission-approved programs. Because vendors cannot afford to front their costs for years, their participation under the RFP process is expected to cease. ComEd Objections at 7-8; IPA Response at 10. The Proposed Order grasps the harm that Staff's proposals would cause to energy efficiency in Illinois, and correctly rejects Staff's arguments. PO at 103-104. For the reasons explained below, the Commission should adopt the Proposed Order's conclusion, as modified by ComEd's BOE.

**1. The sole basis for Staff's extreme proposal is a single vendor insolvency for which Staff seeks a hindsight disallowance.**

To understand why Staff is the only participant in this docket to so aggressively attack the IPA's procurement of energy efficiency, it is important to appreciate that Staff is attempting to garner support here for an unlawful hindsight disallowance that it is proposing in a ComEd energy efficiency reconciliation docket, which Staff readily references in its Objections. Staff Objections at 10. In ComEd's Plan Year 6 reconciliation docket, Staff has proposed, *inter alia*, two disallowances totaling nearly \$390,000 relating to two programs administered by IPA third-party vendor Project Porchlight Inc. *Id.*; *see generally* ICC Docket No. 14-0567, Tolsdorf Dir., Staff Ex. 1.0 and Tolsdorf Reb., Staff Ex. 2.0.



These programs represent winning bids in the Section 16-111.5B RFP process that ComEd was required to conduct for purposes of procuring third-party administered IPA energy efficiency programs – here, for the 2013 and 2014 Plans. As such, these proposed programs were reviewed by Staff, intervenors, and the Commission in the course of ICC Docket Nos. 12-0544 and 13-0546, no one objected to the programs, the Commission approved the programs, and the final orders required that ComEd move forward with funding these third party programs. *See* ComEd Objections at 6-7; *see generally Illinois Power Agency*, ICC Docket No. 12-0544, Final Order (Dec 19, 2012) at 35-36, 268-272, 277; *Illinois Power Agency*, ICC Docket No. 13-0546, Final Order (Dec. 18, 2013) at 37-38, 205-206.

Because Project Porchlight did not ultimately deliver the promised energy savings, the pay-for-performance contract required Project Porchlight to return to ComEd any start-up costs or funds that ComEd had paid to Project Porchlight during the course of Plan Year 6. Project Porchlight unexpectedly and unforeseeably became insolvent early in Plan Year 7, however, and it was unable to perform under the contract and return the funds it owed. ComEd Objections at 7. While Staff never claims (and could not claim) that it was imprudent for ComEd to fund the Project Porchlight programs approved and mandated by the Commission,<sup>2</sup> Staff nevertheless argues that the unforeseeable insolvency of Project Porchlight should result in the disallowance of costs related to the Project Porchlight administered programs and that ComEd should bear such costs. ComEd Objections at 7; *see generally* ICC Docket No. 14-0567, Tolsdorf Dir., Staff Ex. 1.0 and Tolsdorf Reb., Staff Ex. 2.0. While the basis for Staff’s disallowance remains

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<sup>2</sup> Staff’s proposed disallowance requires a repudiation of the well-established prudence and reasonableness standard. ComEd Reply at 5. “Prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made . . . . When a court considers whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. Hindsight review is impermissible.” *Id.* (quoting *Illinois Power Co., v. Illinois Commerce Comm’n*, 339 Ill. App. 3d 425, 428, 435 (5th Dist. 2003) (internal citations omitted)).

unclear, it appears to be based on nothing more than frustration and vague claims that the industry standard “pay-for-performance” contracts are somehow insufficient.

Staff, in turn, carried its argument into this docket by claiming that pay-for-performance contracting is not sufficient to protect customers. *See, e.g.*, Staff Objections at 10. The IPA, ELPC and ComEd strongly objected to Staff’s attack on pay-for-performance contracting, however, with the IPA observing:

While in the world of regulatory theory it would be nice to insulate ratepayers from any and all risks, some businesses will inevitably fail, and pay for performance contracts are a well-established, reasonable, and pragmatic way to minimize ratepayer exposure to performance risk. Instead of throwing out these programs as advocated by Staff, the IPA believes that the approval of programs by the Commission in this proceeding should provide participating utilities with firm confidence to move forward in contracting with the bidders of the selected programs. Through this proceeding, the Commission may wish to provide clarity on the extent to which approval of programs should inherently be considered approval of prudent expenditures if the resulting contracts contain appropriate pay for performance provisions which have generally been demonstrated to safeguard ratepayers from performance risk. Approved programs have the demonstrated potential to create savings and provide benefits exceeding their costs, and that potential [] should not be unreasonably [] withheld from customers.

IPA Response at 10. Similarly, ELPC noted that the “current RFP requirements, stakeholder and utility screening process, and pay-for-performance model of the IPA third party efficiency programs sufficiently insulate ratepayers from risk of these third-party programs underperforming.” ELPC Reply at 6.

In sum, the pay-for-performance contracting used by the utilities under Section 16-111.5B is a sound, prudent method for protecting customers from performance risk while also ensuring that the General Assembly’s directive to implement third-party energy efficiency

programs is not frustrated. The process encourages achievement of additional energy savings and growth in the energy efficiency economy, including the participation of new entrants, while also ensuring that winning bidders deliver the energy savings promised under the programs. If a vendor fails to deliver some or all of the promised savings, the vendor is contractually bound to pay back funds it has received to implement the program. ComEd Objections at 7; ComEd Response at 9.

In light of this background, it is crucial that the Commission adopt the Proposed Order's conclusion rejecting "disallowance[s] for under-performing programs." PO at 104. This conclusion is not only consistent with the Commission's prudence standard, but also sends a clear signal to the IPA and utilities that they can confidently move forward in soliciting and implementing third-party administered energy efficiency under Section 16-111.5B. Without this clear direction, the utilities would be forced to withhold payment to vendors, as Staff recommends. As explained below, hindsight payments would almost certainly devastate the IPA third-party administered energy efficiency programs.

**2. Staff's hindsight review and payment would effectively foreclose third party-administered energy efficiency programs under IPA plans.**

Staff's extreme reaction to the lone vendor insolvency during seven years of implementing energy efficiency programs does not stop with unlawful disallowances.<sup>3</sup> As Staff must admit, the only possible way to manage around its hindsight disallowances is to prohibit payment of vendors until after the independent evaluator verifies the energy savings for the vendors' programs. Staff Objections at 10-11; Staff Response at 16-17; Staff Reply at 12.

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<sup>3</sup> To put this amount in its proper context, the current Plan Year alone is projected to include energy efficiency expenditures of over \$260 million. ComEd Response at 10.

Discontinuing payment of start-up costs and any in-progress payments to third-party vendors means that each vendor would be required to front all of its start-up and implementation costs for at least 15 months and then wait months or years for completion of the final evaluation process before receiving any payment. ComEd Objections at 8.

The IPA and ComEd expect that Staff's approach would dramatically reduce participation in bidding through the IPA process, and thereby reduce energy efficiency offerings and savings contrary to the goals of the General Assembly set forth in Sections 8-103 and 16-111.5B. ComEd Objections at 8; IPA Response at 10; IPA Reply at 6. The IPA, for example, noted that it "concurs with ComEd that this would have a chilling effect on third-party energy efficiency programs in Illinois and would badly frustrate the statutory requirement that IPA procurement plans 'fully capture the potential for all achievable cost-effective savings.'" IPA Response at 10. Staff never refutes this virtually inevitable outcome, and Staff does not (and cannot) cite to any examples of the sort of payment delays it proposes.

The folly of Staff's imprudent proposal can best be illustrated by a simple, real world example. If Staff's proposal were applied to new home construction, homes would rarely be built. Builders cannot afford to front construction costs for months or years (to pay for materials, employees and subcontractors) while waiting to receive the entire payment for the home only after the home passes the final inspection. Of course, this is not the way that construction operates, and the home purchaser is required to provide payments to the builder as construction progresses (whether out of the purchaser's pocket or through a loan). Issues regarding the builder's nonperformance, moreover, are typically governed by the purchase contract. Contracting with third-party vendors to build and implement energy efficiency programs should be treated no differently. ComEd Reply at 6-7.

The Commission should accordingly adopt the Proposed Order’s conclusion “reject[ing] Staff’s proposals to require the utilities to withhold payment”, which is absolutely necessary to assure the IPA and utilities that they can move forward with funding third-party vendors. PO at 104.

**3. Staff’s proposed changes to the TRC test are vague and lack support.**

As a last resort, Staff argues in its BOE that the performance risk programs should be excluded because they would fail the TRC test if Staff’s unarticulated changes to the TRC test inputs were adopted. Staff BOE at 4-5. Yet, the parties have been unable to determine just what it is that Staff proposes. ELPC, for example, noted that Staff’s proposal lacks “quantifiable criteria” and is “arbitrary, unfounded, and would introduce needless complications to a process that runs well.” ELPC Reply at 6. Similarly, the IPA observed that “Staff’s ‘proposal’ contains no actual quantitatively-substantiated adjustments. Instead, Staff offers only an arbitrary, outcome-driven change to eliminate programs from consideration. Should this topic be referred to a workshop, additional discussions must demonstrate the commitment to detail and focus found in other TRC test input debates.” IPA Reply at 7. ComEd also offered similar comments, recommending that any consideration of Staff’s unsubstantiated proposals be left to workshops:

The Commission has previously directed that TRC Test-related issues should receive fuller treatment in workshops rather than expedited procurement dockets. The Commission’s order approving the 2015 Plan, for example, directed stakeholders to undertake workshops to discuss proposed changes to the TRC Test based on demand response induced pricing effects and non-energy benefits. *Illinois Power Agency*, ICC Docket No. 14-0588, Final Order (Dec. 17, 2014) at 157. Citing the expedited nature of the procurement dockets, the complex and statutory nature of the TRC Test, and that the Test also impacts Section 8-103 (electric) and 8-104 (gas) energy efficiency programs, the Commission properly reasoned that TRC Test-related issues should be further addressed

in workshops where the full universe of potentially impacted stakeholders can comment (*e.g.*, gas utilities and related stakeholders). *Id.* The same rationale holds true here with respect to the review of third-party bids, and perhaps even more so given that Staff directs its criticism at “ComEd and stakeholders.” Staff Objections at 12.

ComEd Response at 8-9.

Finally, ComEd strongly opposes Staff’s mischaracterization of ComEd’s Response, claiming that ComEd “appears to agree that there are errors in ComEd’s total resource cost (“TRC”) analysis and associated TRC results presented in the Plan.” Staff BOE at 5. The fact that ComEd acknowledged that Staff identified what *Staff believed* to be an error does not lead to the broad conclusion that there are generally errors in ComEd’s TRC analysis and associated TRC results. To the contrary, ComEd updated its TRC analysis and results when it filed comments on the Draft 2016 Plan.<sup>4</sup> Moreover, ComEd works with key stakeholders from the Stakeholder Advisory Group to screen and review the bids received under the RFP process. Every program is reviewed by this group, and any participant may (and often does) reach out to the vendors to question or seek clarification regarding a given program’s assumptions. ComEd Response at 9. Staff’s unfounded insinuations of TRC analysis errors thus should be rejected.

**B. SECTION 7.1.4. WHETHER TO REQUIRE THE SAG TO ADDRESS HOW SECTION 16-111.5B PROGRAMS CAN BE USED TO EXPAND SECTION 8-103 EE PROGRAMS THAT HAVE NOT YET BEEN APPROVED BY THE COMMISSION (SECTION IV.B.5 OF PO).**

With respect to the issue of how Section 16-111.5B programs may be used to expand Section 8-103 programs that have not yet been approved, ComEd’s BOE proposes that the Proposed Order’s Commission Analysis and Conclusion section be revised to more fully

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<sup>4</sup> See ComEd Comments on IPA 2016 Draft Procurement Plan, Revised Appendices C-2 through C-4 to the Load Forecast for Five-Year Planning Period June 2016 – May 2021, *available at* <http://www.illinois.gov/ipa/Pages/DraftProcurementPlanComments2016.aspx>.

articulate the statutory framework and legal issue confronting the parties. ComEd BOE at 2-4. The IPA's BOE similarly observes that "the Proposed Order appears to misread the governing law and must be clarified regardless." IPA BOE at 8. Because ComEd and the IPA each offers clarifying revisions while ultimately preserving the directive that parties continue to address the issue in workshops, ComEd recommends that the Commission adopt either ComEd's revisions or the IPA's revisions.

**C. SECTION 7.1.2.1. WHETHER THE PLAN SHOULD BE MODIFIED TO ENSURE THAT THE UTILITIES OFFER MULTI-YEAR CONTRACTS (SECTION IV.B.2 OF PO).**

To support their proposed clarifying revisions to Section IV.B.5 of the Proposed Order regarding the expansion of Section 8-103 energy efficiency programs, the IPA and ComEd explained the statutory framework requiring that the IPA's Section 16-111.5B programs be new or expanded programs as compared to those approved under Section 8-103. 220 ILCS 5/16-111.5B(a)(3)(C), (a)(2); ComEd BOE at 2-3; IPA BOE at 8-9. For these same reasons, ComEd supports Ameren's proposed clarifying revisions to Section IV.B.2 of the PO, which ensure that the utilities' multi-year contracts with energy efficiency vendors do not exceed the three-year planning period under Section 8-103. Ameren BOE at 1-4.

## CONCLUSION

Based on the record and the arguments made herein, ComEd respectfully requests that the Proposed Order be revised as set forth herein and in its Brief on Exceptions.

Dated: December 1, 2015

Respectfully submitted,

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